

# Exhibit 18

## (Filed Under Seal)

1 UNITED STATES DISTRICT COURT

# 2 FOR THE

3 DISTRICT OF MINNESOTA

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5 C.A. No. 16-cv-1054 (WMW/DTS)

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7 FAIR ISAAC CORPORATION,)

8 Plaintiff )

9 v. )

1 0 FEDERAL INSURANCE COMPANY AND ACE )

1 1 AMERICAN INSURANCE COMPANY,) )

1 2 Defendants )

1 3 -----

1 4 CONFIDENTIAL TRANSCRIPT

1 5 ATTORNEYS' EYES ONLY

1 6

1 7 DEPOSITION OF MICHAEL SAWYER

1 8 October 2, 2018

1 9 Courtyard Marriott

2 0 35 Foxborough Boulevard

2 1 Foxborough, Massachusetts

2

2 4 Court Reporter: Amie D. Rumbo

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1 9 ALSO PRESENT:

2 0 James Woodward, Vice President, Legal, Fair Isaac  
2 1 Corporation

2 2

2 3 Kevin Murphy, Senior Counsel Global Legal for  
2 4 Chubb

1 I used. But the premise of the conversation was  
2 that, you know, upon my reading of the amendment  
3 two and the language around territory in the  
4 software license agreement that, you know, a broad  
5 interpretation of ELA beyond the United States, I  
6 felt was an incorrect interpretation of the  
7 contract based on the language that I read.

8 Q. And did you talk at all about your  
9 interpretation compared with the actual use by  
10 Chubb?

11 A. I can't be certain, but logically,  
12 I would not bring up that point to Russ if there  
13 was not something that, you know, generated a  
14 thought around the use of the software outside of  
15 the territory and the country.

16 Q. Okay.

17 A. Whether that use is, you know,  
18 existing or, you know, potential future use, I  
19 couldn't be certain.

20 MR. FLEMING: Mark this as  
21 Exhibit 74.

22 (Exhibit 74 marked for identification.)

23 Q. Mr. Sawyer, is this an e-mail from  
24 you to Henry Mirolyuz dated July 22nd, 2009?

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1 A. That is not a correct statement.  
2 Q. Okay.  
3 A. As a representative of FICO, my  
4 role would have been to help support and promote  
5 sales of product. So if the use of Blaze in  
6 Europe represented a new sales opportunity for  
7 FICO, I would have helped Henry promote that as  
8 well. So I do not agree with your statement that  
9 this definitively says that I agreed that their  
10 existing licensing agreement included Europe.

11 Q. So in the ordinary course, when  
12 would you have had a discussion with Henry  
13 Mirolyuz about the scope of the software license,  
14 if, at that time, you believed that the license  
15 would not allow use of Blaze in Europe?

16 A. At this point in time, it would not  
17 be my responsibility to have that conversation.  
18 As you see on this e-mail, Ian Brodie is copied.  
19 Ian is the client partner at that time. I would  
20 have been supporting Ian in this effort with  
21 Henry, and it's likely that, you know, based on a  
22 conversation that Ian had with Henry that Ian  
23 requested that I pull this relevant case study and  
24 send it over to Henry. So as it relates to this

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1 A. Yes. Exhibit 74 represents an  
2 e-mail that I sent to Henry Mirolyuz in July  
3 of 2009.

4 Q. And do you recall sending this  
5 e-mail to him?

6 A. No, I do not.

7 Q. In that e-mail, you attach a Blaze  
8 case study with Aviva in the United Kingdom and  
9 you say, quote, "That might serve as a good source  
10 of information as you try and promote the use of  
11 Blaze in the Europe," unquote. Do you see that?

12 A. I do, yes.

13 Q. Do you recall providing Henry  
14 Mirolyuz with this Blaze case study?

15 A. No, I do not.

16 Q. Would you agree that in this e-mail  
17 you are attempting to assist Henry Mirolyuz in  
18 promoting the use of Blaze in Europe?

19 A. Yes.

20 Q. Okay. So it would be fair to say,  
21 at least at this time, which is prior to the time  
22 you became a client partner, that you did not  
23 believe that the use of Blaze in Europe would be  
24 in violation of the software agreement?

1 specific e-mail, it would not have been in my  
2 scope of responsibility.

3 MR. FLEMING: Mark this as Exhibit

4 75.

5 (Exhibit 75 marked for identification.)

6 Q. Mr. Sawyer, is this an e-mail from  
7 Tom Bradley to Ian Brodie that you and others were  
8 copied on concerning Chubb insurance follow-up?

9 A. Yes. That appears to be correct.

10 Q. Okay. And there's an e-mail chain,  
11 and the e-mail below is an e-mail from Ian Brodie  
12 to Tom Bradley copying you and the same people on  
13 the same subject; is that right?

14 A. Yes, that appears correct.

15 Q. Do you recall the substance of this  
16 e-mail?

17 A. I do not. I have it in front of  
18 me. I can read it, but I do not recall a -- this  
19 e-mail to Tom Bradley. In fact, I couldn't even  
20 recall Tom Bradley as a CFO of FICO, so no.

21 Q. You discussed earlier in your  
22 testimony the premium validation application.  
23 What was that project? Could you explain it?

24 A. Yes. So the premium validation

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1 project was in Chubb's corporate business systems 2 unit based in Warren, New Jersey where they had a 3 COBOL system in place, which I believe was called 4 PARSE, and Chubb was having resource constraints 5 finding qualified COBOL developers to maintain the 6 large volume of premium data validation rules in 7 that system, and they were looking for 8 alternatives for technologies to support that 9 validation edits and, ultimately, Chubb selected 10 to utilize FICO's Blaze Advisor for that project.	1 one reflected in this e-mail? 2 A. Professional services fees as 3 reflected in this e-mail and other projects of 4 similar nature as well as software maintenance and 5 support. 6 Q. All right.
7 MR. FLEMING: Mark this as Exhibit 8 76. 9 (Exhibit 76 marked for identification.) 10 Q. Let me know when you've had a 11 chance to look through it.	7 MR. FLEMING: Mark this as Exhibit 8 76. 9 (Exhibit 76 marked for identification.) 10 Q. Let me know when you've had a 11 chance to look through it.
12 Q. Do you see in the second paragraph 13 where -- in the second paragraph of the e-mail 14 below where Mr. Brodie says, quote, "Chubb already 15 has an enterprise license for Blaze. This is the 16 professional services proposal to assist them with 17 the design and development of that application," 18 unquote.	12 A. Okay. 13 Q. Let's look first at the e-mail at 14 the bottom of page 1. That is an e-mail from 15 Russel Schreiber to you and others dated 16 March 28th, 2012; is that right?
18 What do you understand that Mr. 19 Brodie meant by that?	17 A. That is correct. 18 Q. And at that time, you were a client 19 partner at FICO?
20 A. If you give me a minute to read the 21 e-mail.	20 A. That is correct. 21 Q. And he's asking with regard to the 22 third and fourth quarters, what's the pipeline, 23 what are the commit deals, what's the forecast. 24 What is he talking about?
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1 A. Okay. Based on the e-mail, it 2 suggests that the intended use of the Blaze 3 Advisor software for the PARSE project in Warren, 4 New Jersey would fall within the scope of the 5 existing Chubb licensing agreement, and therefore, 6 the commercial proposal that we had put in place 7 for that project that Ian was seeking executive 8 level approval for was strictly professional 9 services.	1 A. So he's asking for what is your 2 total pipeline as a salesperson of potential sales 3 opportunities across your territory. What are the 4 commit deals, what deals are you committing as a 5 salesperson that you will close in the quarter. 6 And based on that, what is your booking and 7 revenue forecast associated with your territories 8 for the two quarters.
10 Q. So then in the third paragraph it 11 talks about the size of this engagement as being 12 approximately a million dollars over the next 12 13 to 15 months; is that right?	9 Q. So he's asking about deals or 10 projects that are already in the door and new 11 deals?
12 A. That is correct. That is stated 13 here.	12 A. No. This would all be prospective 13 deals.
14 Q. So you talked earlier in your 15 testimony about the various sources of revenue 16 generated by FICO. With regard to Chubb as a 17 client, during the time that you were a client 18 partner, were any fees generated via sales of 19 licenses to Chubb?	14 Q. I see. 15 And you respond at the top of the 16 page the next day stating "I've cleaned up SF this 17 morning." Is that Salesforce?
20 A. Not that I'm aware of, no.	18 A. That is.
21 Q. All the revenue that were generated 22 related to professional services fees such as the	19 Q. And is that a software application?
Page 62	20 A. Salesforce is -- at the time, was 21 FICO's CRM system and used for their sales force 22 to manage pipelines.
	23 Q. And you reference "the attached 24 report to show deals by quarter with the
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1    2015, it would be impossible to make the assertion  
2    that Chubb has violated the license agreement.  
3    The transaction had not occurred yet.  
4       So our concern was that the  
5    proposed transaction may impact that provision and  
6    wanted to engage the client in dialogue to get a  
7    better understanding of the process that they were  
8    going through around the acquisition and whether  
9    or not they felt like this provision in their  
10   contract was going to be impacted by the proposed  
11   transaction.

12      Q. All right. All right. Showing you  
13   what's been marked as Exhibit 79.

14      (Exhibit 79 marked for identification.)

15      Q. Do you recognize these e-mails?  
16      A. Yes. Upon seeing it, I can recall  
17   these messages.

18      Q. Looking at the bottom of the page,  
19   it looks like it's an e-mail from Lamont Boyd to  
20   Russ Schreiber. Who is Lamont Boyd?

21      A. Lamont Boyd is a director or senior  
22   director in FICO's scoring business unit.

23      Q. Was this -- you were copied. Russ  
24   Schreiber forwarded this e-mail to you. Was this

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1    relationships with, you know, decision makers at  
2    Chubb may -- we may lose some relationships  
3    because ACE being the acquirer, may, you know,  
4    take a stronger role in deciding future direction  
5    of the company, and Chubb was a significantly more  
6    significant client than ACE was for FICO at the  
7   time.

8       MR. FLEMING: Mark this as  
9   Exhibit 80.

10      (Exhibit 80 marked for identification.)

11      Q. So do you recall this e-mail chain  
12   which begins with an e-mail from you dated  
13   October 7th to Russ Schreiber and ends with a --  
14   that's dated October 7th, 2015, and ends with an  
15   e-mail from you to Russ Schreiber dated later that  
16   same day?

17      A. I don't recall this e-mail  
18   exchange, but I don't contest its accuracy.

19      Q. Okay. Let's look at the first  
20   e-mail, which is on the third page, Bates stamped  
21   number FICO 1700 and that's an e-mail from you to  
22   Russ Schreiber dated October 7th, 2015, and you  
23   say, quote, "I think we're in a good spot. See  
24   below. The first excerpt is from the original

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1    the first that you had heard about the ACE merger?

2      A. Proposed merger, yes, I believe so.

3      Q. What was your understanding of what  
4   Lamont Boyd meant by, quote, "This could be  
5   another backdoor win for FICO, CBIS"?

6      A. CBIS relates to a FICO product  
7   called Credit Based Insurance Scores, which are  
8   leveraged by a significant number of personal  
9   lines insurance carriers to assess the risk posed  
10   by an applicant for insurance. What Lamont is  
11   saying here is that Chubb historically, in their  
12   personal lines division, had not used Credit Based  
13   Insurance Scores, but ACE had, and so Lamont is  
14   suggesting that upon completion of the merger, the  
15   ACE folks who are in charge of their risk  
16   department may influence Chubb to use the Credit  
17   Based Insurance Scoring solutions in their book of  
18   business.

19      Q. And why did you respond in the  
20   middle of the page an e-mail, it looks like, to  
21   Russ dated July 1st, 2015, "Wow, not good"?

22      A. Sure. So as best I can recall, you  
23   know, my concern would be that because Chubb was  
24   getting acquired by ACE, that you know, our

1    MSLA and states they have no assignment rights.  
2    The second results from the MSLA and defines  
3   Enterprise License. It's pretty restrictive and  
4   excludes Parent Company which is what I think ACE  
5   would be. The third is from the amendment when  
6   they picked up the ELA option. It provides some  
7   more flexibility as it relates to subsidiaries and  
8   affiliates, but not parent company," end quote.

9       Now, you testified before when we  
10   first started here after lunch, you talked about  
11   in late 2015, your actions after learning of the  
12   proposed ACE acquisition of Chubb. And is this  
13   what you were -- does this reflect what you were  
14   talking about in terms of reviewing the license  
15   agreement so far as it relates to the assignment?

16      A. Yes, I believe so. As I testified  
17   and as you can see here, my initial note is to  
18   Russ Schreiber. You previously asked me who would  
19   have directed me to do the analysis of the  
20   contract, and I answered Russ Schreiber. So based  
21   on Russ' request, this would have been my review  
22   of the contract to provide him with the  
23   information that I saw in the contract for him to  
24   interpret.

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1 objections. I object to that it misstates 2 testimony. I object to the 3 mischaracterization of it, and I object to 4 the legal characterization of 10.8, and I 5 object to the witness being asked for a legal 6 characterization.  7 <b>A. So in my interpretation of this,</b> 8 Chubb had the duty to seek and get FICO's written 9 consent for an assignment. They failed to do so. 10 So at no point were we ever able to have a 11 discussion with the client, being Chubb in this 12 case, around their intended use of the product 13 going forward. So at the time when this event 14 occurred, the fact that no written consent was 15 provided for the assignment is what triggered, you 16 know, our action in sending that letter to Chubb 17 notifying them of the breach.	1 to say Chubb. 2 <b>A. Yeah.</b> 3 <b>Q. Chubb, yeah.</b> 4 <b>A. For clarity, after the merger, I</b> 5 <b>had no evidence supplied to me that would indicate</b> 6 <b>that Chubb used the product in an expanded way.</b> 7 <b>Q. Okay.</b> 8 <b>A. But as I said, prior to the actual</b> 9 <b>transaction closing, I did have conversations with</b> 10 <b>representative -- with Henry Mirolyuz from Chubb</b> 11 <b>who had shared potential plans for it which caused</b> 12 <b>our concern under the contract.</b> 13 <b>Q. So are there any e-mails going back</b> 14 <b>and forth between you and Henry Mirolyuz about the</b> 15 <b>planned post-merger activity?</b> 16 <b>A. I am not certain. There is -- I do</b> 17 <b>remember one exchange I had with Henry -- whether</b> 18 <b>it was an e-mail or not, I am not certain --</b> 19 <b>indicating that Accenture was a significant vendor</b> 20 <b>partner of ACE and would likely be involved in any</b> 21 <b>post-merger transformation projects or integration</b> 22 <b>projects, and Henry had inquired about our</b> 23 <b>experience partnering or working with Accenture,</b> 24 <b>but I couldn't be certain if that was an e-mail or</b>
Page 133  1 extent of the foundation. 2 <b>A. Yeah. I was not in a position to</b> 3 <b>know what was happening inside of the walls at</b> 4 <b>Chubb around discussions for using the platform.</b> 5 <b>Immediately following the conclusion of the</b> 6 <b>transaction, Chubb did not share any evidence with</b> 7 <b>us that would suggest that they planned to use the</b> 8 <b>scope -- the product in an expanded scope.</b> 9 <b>Q. Okay.</b> 10 <b>A. But lack of Chubb providing</b> 11 <b>evidence does not substantiate the potential, and</b> 12 <b>we were asking for a discussion around their</b> 13 <b>planned use. My view on this is that you're</b> 14 <b>asking, again, for my interpretation on this. We</b> 15 <b>didn't even get to Section 2 because Section 1, we</b> 16 <b>never granted our rights for the assignment to</b> 17 <b>begin with.</b> 18 <b>Q. Okay. But let's just deal right</b> 19 <b>now with the expanded use issue. Following the</b> 20 <b>merger, you agree that you are aware of no</b> 21 <b>evidence that FICO engaged in more expansive use</b> 22 <b>of the FICO products as compared to the use of</b> 23 <b>which it was making before the merger?</b> 24 <b>MR. HINDERAKER: I think you meant</b>	Page 135  1 <b>a side conversation that Henry and I had.</b> 2 <b>Q. Okay. Other than that discussion</b> 3 <b>or possible e-mail, are you aware of any other</b> 4 <b>e-mails going back and forth between you and Henry</b> 5 <b>Mirolyuz relating to planned activities by FICO</b> 6 <b>post-merger?</b> 7 <b>MR. HINDERAKER: I object to the</b> 8 <b>question as saying any other e-mails.</b> 9 <b>Misstates the testimony.</b> 10 <b>Q. Go ahead.</b> 11 <b>A. I am -- I cannot recall any other</b> 12 <b>communications between me and Henry on the topic.</b> 13 <b>Q. Okay. Now, going back to</b> 14 <b>Section 10.8 and the language relating to where it</b> 15 <b>says, in the middle of that paragraph, "which</b> 16 <b>shall not be unreasonably withheld," do you --</b> 17 <b>what is it that you understand is meant by that,</b> 18 <b>and specifically, what is it that you understand</b> 19 <b>will not be unreasonably withheld?</b> 20 <b>A. Right. So my interpretation of</b> 21 <b>this is that when FICO licenses their software,</b> 22 <b>they license it for a specific scope of use, which</b> 23 <b>is driven by a number of parameters in our pricing</b> 24 <b>model. And so my interpretation of this language</b>